

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1520 of 2003

WITH

CIVIL APPLICATION No 5746 of 2003

WITH

CIVIL APPLICATION NO 6588 of 2003

WITH

FIRST APPEAL No 1690 of 2003

WITH

CIVIL APPLICATION NO 6312 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS

and

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

MALIBEN KAMABHAI HARIJAN

Versus

LRS OF LATE JAGJIVAN NANJI

Appearance:

1. First Appeal No. 1520 of 2003
MR RAJAN D SHAH for Petitioner No. 1-2
..... for Respondent No. 1,7,9-9/5

MR PJ KANABAR for Respondent No. 1/1-6,7/1-8
2. First Appeal No. 1690 of 2003 & C.A. 6588 of 2003
MR PJ KANABAR for Petitioners
MR DEEPAK M SHAH for Respondents

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 17/10/2003

CAV COMMON JUDGEMENT

(Per : HON'BLE MR.JUSTICE AKSHAY H.MEHTA)

1. The present First Appeals and the Civil Applications arise from the judgment and decree passed by the learned Civil Judge [S.D.] Veraval dated 19th July, 2003 in Special Civil Suit No. 204 of 2001 (old Special Civil Suit No. 6 of 1995). Appellants of First Appeal No. 1520 of 2003 are original defendants nos. 9 and 10 and applicants of Civil Application No. 6588 of 2003 in First Appeal No. 1520 of 2003 are original defendants nos. 1 to 8. The appellants of First Appeal No. 1690 of 2003 are the original plaintiffs and so are the applicants of Civil Application No. 6312 of 2003. For the sake of convenience, the parties are referred to in this judgment by their original position in the suit.

1.1. First Appeal No. 1520 of 2003 has been admitted by this Court vide order dated 18th August, 2003. Civil Application No. 6588 of 2003 is filed for recalling the said order of admission on the ground that the First Appeal is not maintainable in this Court in the facts and circumstances stated in the said application. First Appeals Nos. 1520 of 2003 and 1690 of 2003 have been filed by the respective appellants challenging the aforesaid judgment and decree dismissing the suit. First Appeal No. 1690 of 2003 is pending admission. In view of the prayer sought in Civil Application No. 6588 of 2003 preliminary objection regarding maintainability of these appeals raised by counsel for respondents of First Appeal No. 1690 of 2003 Mr. P.J. Kanabar, both the First Appeals alongwith the Civil Application were required to be heard on the question of their maintainability and hence with the consent of the learned counsels for all the parties these matters were taken up for hearing on 18/09/2003. The issue regarding maintainability of First Appeals before this Court is now being decided by this common judgment.

2. The plaintiffs had filed the aforesaid suit for declaration and perpetual injunction against defendants nos. 1 to 8 on the averments that the plaintiffs and defendants nos. 9 and 10 are the legal heirs of late Kamabhai Tejabhai. Plaintiff no. 1 and defendant no.10 are the sons of late Kamabhai; whereas plaintiff nos. 2 to 5 are the daughters. Defendant no. 9 is the widow of late Kamabhai and defendants nos. 1 to 8 are the heirs and legal representatives of deceased Nanji Kanji and Jagjivan Nanji. According to the plaintiffs, their ancestor Kamabhai Tejabhai was the protected tenant of Gaekwad Agricultural Company from the days of erstwhile State of Baroda of the land bearing survey no. 165 and survey no. 166 of village Ghantvan. By virtue of provisions of section 64 of the Bombay Tenancy and Agricultural Lands Act, 1948, Kamabhai Tejabhai received the said land in a sale. They came to know that the deceased ancestors of defendants nos. 1 to 8, Nanji and Jagjivan, got sale-deeds executed in their favour in respect of aforesaid lands admeasuring Acre 5 35 Guntha for a consideration of Rs.14,00/= According to the plaintiffs neither Nanji nor Jagjivan nor defendants nos. 1 to 8 were having any agricultural land and that they were not agriculturists. In fact according to the plaintiffs, Nanji and Jagjivan were money lenders and they had nothing to do with agriculture. The plaintiffs have further averred that the land in question was the new tenure, which could not have been sold without obtaining the prior permission of the Collector. It is their say that upon the demise of Kama Teja the plaintiffs and defendants nos. 9 and 10 had inherited land bearing survey no. 166 admeasuring Acre 16 - 29 Guntha. It is averred that the plaintiffs came to know about the sale-deeds on 11th February, 1985 when defendant no. 10 informed them about it. According to them, late Nanji and Jagjivan who were businessmen and by exercising their influence, they got the suit lands entered into the revenue records in their names. However, according to them, Jagjivan and Kanji and Nanji had never obstructed their possession of the suit lands. They have averred that defendants nos. 1 and 8 were now trying to interfere with the possession of the suit land and hence they were required to file this suit for declaration as well as permanent injunction restraining them from interfering with the possession of the plaintiffs of the suit land.

2.1. Defendants nos. 1 to 8 have contested the suit by filing written statement at Exh. 21. They have denied the averments made in the plaint and they have also denied the ownership of the plaintiffs as well

as defendants nos. 9 and 10 of the suit land. They have contended that defendants nos. 9 and 10 have executed two separate sale-deeds in favour of Nanjibhai and Jagjivanbhai in respect of lands admeasuring Acres 5 - 35 Guntha each i.e. total Acres 11 - 30 Gunthas and remaining land i.e. land admeasuring Acres 4 and 39 Gunthas was in possession of the plaintiffs and defendants nos. 9 and 10. On these contentions they have prayed that the suit be dismissed with costs.

2.2. Defendants nos. 9 and 10 have supported the plaintiffs.

3. At the trial, the suit was originally filed in the Court of the Civil Judge [S.D.] at Amreli, but subsequently it came to be transferred to the Court of the Civil Judge [S.D.] at Veraval, since Kodinar Taluka which earlier was part of Amreli district, in the year 2001 became the part of Junagadh district.

4. The learned trial Judge at the end of the proceedings came to the conclusion that the suit land was sold to Jagjivanbhai and Nanjibhai by legal and valid sale-deeds and that defendants nos. 1 and 8 were the lawful owners of the suit land and the plaintiffs and defendants nos. 9 and 10 had no right, title or interest in the same and, therefore, the reliefs sought regarding declaration and permanent injunction could not be granted in their favour. Consequently the learned Judge dismissed the said suit by judgment dated 19/7/2003. As stated above the First Appeals have been filed by plaintiffs and defendants nos. 9 and 10 against this judgment and defendants nos. 1 to 8 have raised objection with regard to their maintainability before this Court.

5. We have heard Mr. Dipak M. Shah, learned advocate for plaintiffs as well as defendants nos. 9 and 10 i.e. appellants of both the appeals and Mr. P.J. Kanabar, learned advocate for defendants nos. 1 to 8, who are the applicants of aforesaid Civil Application No. 6588 of 2003, solely on the question of maintainability of these appeals.

5.1. Mr. Shah has drawn our attention to the averments made in the plaint and in particular the averments made in paras. 5, 17 and 18 of the plaint. He has submitted that from the contents of para. 17 it is very clear that for the purpose of jurisdiction, the plaintiffs have fixed the value of the land in question at Rs.2,50,000/=. He has further submitted that for the

purpose of court fees it has been averred that because the subject matter in dispute is not susceptible of monetary evaluation, court fee of Rs.30/= in accordance with the provisions of section 6 (iv) (j) of the Bombay Court Fees Act (hereinafter referred to as 'the BCF Act') is affixed. In short, he has submitted that for the purpose of jurisdiction the suit is valued at Rs.2,50,000/= and, therefore, in accordance with the provisions of Bombay Civil Courts Act, 1869 (for short 'BCC Act') and in particular the provisions of sections 24 and 25 thereof, the suit has been filed in the court of the learned Civil Judge [S.D.]. He has further submitted that when the relief claimed in the suit is incapable of monetary evaluation, the plaintiff is entitled to fix his own valuation and the suit has to be filed in appropriate court in the light of the valuation determined by the plaintiff. In support of his contention, Mr. Shah has placed heavy reliance on the provisions of the BCC Act and in particular the provisions contained in Part VI of the said Act, which deal with Civil Judges. He has drawn our attention to the provisions of sections 21, 22, 23, 24 and 25 thereof. Section 21 provides for Civil Courts subordinate to the District Court as per the requirement of the State Government. Section 22 provides for appointment of Civil Judges in these subordinate Civil Courts. Section 22-A prescribes the power of the State Government to fix the local limits of jurisdiction of the Civil Judges. Section 23 deals with situation of the subordinate Courts. Section 24 of the BCC Act provides for classes of Civil Judges. Section 25 of the BCC Act provides for special jurisdiction of Civil Judge [Senior Division]. He has thereafter drawn our attention to section 6 (iv) (j) of the BCF Act wherein it has been provided that in all suits under clause (e) to (i) the plaintiff shall state the amount at which he values the relief sought with the reasons for valuation. He has, therefore, submitted that from conjoint reading of all these provisions and particularly the provisions of section 6 (iv) (j) of the BCF Act and provisions of sections 24 and 25 of the BCC Act, it will be very clear that when the suits where declaration is sought with or without injunction or with or without other consequential reliefs and the subject matter in dispute is not susceptible of monetary evaluation, the plaintiff could fix the valuation and affix the stamp of Rs.30/= for the purpose of court fees and also for the purpose of jurisdiction. According to him, as the present suit is filed for declaration and permanent injunction, the plaintiff was entitled to value the suit at Rs.2.50 lacs for jurisdiction and it is this value which has to be taken

into account for the purpose of deciding the jurisdiction of the Court. In support of his submissions, he has placed reliance on the following decisions :-

1. R.Subrao v. S. Vemkatrao reported in AIR 1918 Privy Council p.188
2. Chhagan Karsan v. Bhagwanji reported in 1972 GLR at page 835
3. Shivsangappa v. Muchkhandeppa reported in AIR 1932 Bombay p. 160.

5.2. As against that, Mr. Kanabar, the learned advocate for defendants nos. 1 to 8 has submitted that since in this case court fees stamp of Rs.30/= has been affixed and the suit has been valued for the purpose of court fees u/S. 6 (iv) (j) of the BCF Act; the valuation for the purpose of Court fees would automatically govern the valuation for the purpose of jurisdiction by virtue of the deeming fiction of section 8 of the Suits Valuation Act and, therefore, the appeals ought to have been filed before the District Court and not before this Court. He has drawn our attention to the provisions of the Suits Valuation Act, 1887 and particularly to section 8 thereof, which reads as under:-

"8. Court-fee value and jurisdictional value to be the same in certain suits.- Where in suits other than those referred to in the Court Fees Act, 1870, section 7, Paragraphs V, VI and IX and paragraph X, Clause (d) Court fees as payable ad valorem under the Court fees Act, 1870, (VII of 1870) (VII of 1870) the value as determinable for the computation of court-fees and the value for purposes of jurisdiction shall be the same."

In support of his such contention he has placed reliance on the decisions of this Court as well as of the Apex Court. He has placed reliance on the decision rendered by the learned Single Judge of this Court in the case of Filoma Pathubhai Patel v. Ambalal D. Bhagat reported in 1987 (1) G.L.H. (U.J.) page 21 and a decision of the Apex Court rendered in the case of Sathappa Chettiar v. Ramanathan Chettiar reported in AIR 1958 S.C. p. 245.

5.3. In reply, Mr. Shah has submitted that in view of the Gujarat Amendment in the provisions of the Suits Valuation Act, section 8 of the said Act would not apply to the Gujarat State. Further that by virtue of amendment in section 8 of the said Act, the provisions of Suits Valuation Act would come into force only in cases where the suit are such wherein ad-valorem court fees are

required to be paid. The present suit not being a suit of such a nature would not be covered u/S. 8 of the Suits Valuation Act.

6. We have carefully examined the rival submissions and the authorities cited before us. We may first deal with the submission advanced by Mr. Shah and the provisions of law as well as the decisions relied on by him. As stated above, he has submitted that the plaintiffs are entitled to fix their own valuation of the subject matter of the suit when the relief claimed by him in the suit is incapable of being monetarily evaluated. According to Mr. Shah, though Court fee stamp of Rs.30/= has been affixed on the suit under the provisions of section 6 (iv) (j) of the BCF Act, the suit would be triable by the Civil Judge [Senior Division] as the subject matter of the suit has been valued at Rs.2,50,000/= for the purpose of jurisdiction and the appeal against the judgment and decree passed by the Civil Judge would lie before this Court.

6.1. The submission of Mr. Shah cannot be accepted though at first glance it would appear to be attractive. The provisions of the BCC Act prescribe the formation of Civil Courts and the Judges to be appointed in such Courts by the State Government. Such Judges are described as Civil Judges. Section 24 requires verbatim reproduction. It is as under :-

"24. The Civil Judges shall be of two classes.

The jurisdiction of a Civil Judge [Senior Division] extends to all original suits and proceedings of a civil nature.

The jurisdiction of a Civil Judge [Junior Division] extends to all original suits and proceedings of a civil nature wherein the subject matter does not exceed in amount or value twenty thousand rupees.

25. A Civil Judge (Senior Division) in addition to his ordinary jurisdiction, shall exercise a special jurisdiction in respect of such suits and proceedings of a civil nature, as may arise within the local jurisdiction of the Courts in the district presided over by Civil Judges (Junior Division) and wherein the subject matter exceeds the pecuniary jurisdiction of the Civil Judge (Junior Division) as defined by section 24.

In districts to which more than one Civil

Judge (Senior Division) have been appointed, the District Judge, subject to the orders of the High Court, shall assign to each the local limits within which his said special jurisdiction is to be exercised."

6.2. Section 24 prescribes that the Civil Judges shall be of two classes, viz. Civil Judge [Senior Division] and Civil Judges [Junior Division]. So far the Civil Judge [Senior Division] is concerned, the jurisdiction extends to all original suits and proceedings of a civil nature. Jurisdiction of a Civil Judge [Junior Division] extends to all original suits and proceedings of a civil nature wherein the subject matter does not exceed in amount or value Rs.20,000/= which is now amended and the limit is raised to Rs.50,000/=. Thus, section 24 envisages the pecuniary jurisdiction of both the classes of Civil Judges in relation to the original suits or proceedings of a civil nature. So far section 25 is concerned, it provides special jurisdiction of Civil Judge [Senior Division] in addition to his ordinary jurisdiction in respect of suits and proceedings of civil nature. Thus, by virtue of provisions of sections 24 and 25 of the BCC Act ordinary as well as special jurisdiction of Civil Judge [Senior Division] and ordinary jurisdiction of Civil Judge [Junior Division] have been prescribed.

6.3. It is not in dispute that the plaintiff can fix his value of the subject matter of the suit in case the relief claimed in the suit is not capable of being valued. However, the question would be whether the jurisdiction to try the suit would be on the basis of valuation fixed for the purpose of court fees would govern the valuation for the purpose of jurisdiction or the value fixed by the plaintiff of the property involved in the suit would be taken into consideration for determining the jurisdiction. For that purpose Mr. Shah has placed reliance on the decision of the Division Bench of this Court in the case of Chhagan Karsan v. Bhagwanji (supra). The said decision shows that the Division Bench was required to consider two questions referred to it by the learned Single Judge of this Court [Coram : M.U. Shah, J. - as he then was] as the learned Judge doubted the correctness of the decision rendered by another learned Single Judge [S.H. Sheth, J. - as he then was] in the case of Khimji Jiva v. Narendrakumar, (1972) XIII G.L.R. p. 23. The questions are :

"(1) Whether the Civil Judge, Junior Division,
has power to deal with and decide the

suit wherein the subject matter is incapable of monetary evaluation, having regard to the provisions contained in sec. 24 of the Bombay Civil Courts Act, 1869 (Act No. XIV of 1869) ?

- (2) If the objection as to jurisdiction of the Civil Judge, Junior Division, under sec. 24 of the Bombay Civil Courts Act, 1869, is not taken at an earlier stage in the Court below, then, whether a plea of want of jurisdiction can be allowed to be raised for the first time in appeal ?"

The Division Bench of this Court has in detail dealt with the provisions of BCC Act and has explained the scope of various provisions of the said Act. The Division Bench has held that the view of the learned Single Judge in the case of Khimji Jiva (supra) was not legal and sound and it did not lay down the correct law. It may be stated here that the learned Single Judge [S.H. Sheth, J.] in the decision of Khimji Jiva v. Narendrakumar (supra) had held that the suits wherein the valuation was put by the plaintiff in accordance with the section 6 (iv)(j) of the BCF Act, the Civil Judge [Junior Division] had no jurisdiction to try it but the same was triable by the Civil Judge [Senior Division]. While discussing this aspect the Division bench in the case of Chhagan Karsan (supra) has observed that the BCC Act provides for the jurisdiction of Civil Judge [J.D.] and Civil Judge [S.D.]. When the valuation of the suit does not exceed Rs.20,000/= (now Rs.50,000/=), the suit would be triable by the Civil Judge [Junior Division] and other suits i.e. the suit, valuation whereof was above Rs.20,000/= (now Rs.50,000/=) the Civil Judge [S.D.] has the jurisdiction to try them. The Division Bench further observed that when the suits which have been capable of monetary valuation, there would not be any difficulty for the purpose of determining the jurisdiction. It is only in the cases where the subject matter of the suit is incapable of monetary terms, the question would arise to which Court it would lie. The Division Bench has held that the classes of the Civil Judges which have been defined by the BCC Act provide for only two classes i.e. Civil Judge [S.D.] and Civil Judge [J.D.] and they have been acting in their respective jurisdiction which has been stated above. If the suit is incapable of being valued in the terms of money, according to the Division Bench, it has to go before either of the Judges as there is no 3rd category of Civil Judge to be found in the BCC Act and certainly the legislature would not forget to

make provision for such type of suits. It has, therefore, permitted the plaintiff to fix his own valuation in respect of the subject matter of the suit as the provisions of section 6 (iv) (j) of the BCF Act entitles the plaintiff to do so subject to, ofcourse, the court's satisfaction to the effect that it has not been valued at unreasonably low value. The Division Bench has also taken into consideration section 4 of the Suits Valuation Act, 1887 for making above observation. In its opinion, the combined reading of section 4 of the Suits Valuation Act and section 6 (iv)(j) of the BCF Act would show that the suits wherein the subject matter in dispute is not susceptible of monetary evaluation and when it relates to land or interest in land, the plaintiff may fix his own valuation of the reliefs sought in the suit for the purpose of jurisdiction. It, therefore, mainly deals with the right of plaintiff to fix his own valuation of the reliefs sought for the purpose of jurisdiction. Thus, according to the Division Bench, there would always be valuation of the subject matter for the purpose of jurisdiction, every suit or proceedings would necessarily fall within one or other of the two provisions, namely 3rd para. of section 24 or section 25. It has further observed that no category of suit or proceedings would be left out of the purview of either of these provisions. Thus, the Division Bench has merely dealt with the question with regard to the right of the plaintiff to fix his own valuation in certain cases and when such valuation is fixed, it would fall within the purview of the jurisdiction of either the Civil Judge [J.D.] or Civil Judge [S.D.].

6.4. In the present case the plaintiffs have stated that the relief claimed in this suit was not susceptible of monetary evaluation and, therefore, court fee of Rs.30/= was affixed. When that has been determined by the plaintiffs for the purpose of court fees at Rs.30/=, the next question that would arise for consideration is whether it is this valuation which has to be taken into consideration for the purpose of jurisdiction or the valuation fixed of the immovable property involved in the suit. The decision of the Division Bench does not deal with this aspect. However, with a view to appreciate the ratio laid down by the Division Bench, the following observations made by it, are required to be read closely. The observations are :

"It is obvious on a combined reading of sec. 4 and sec. 6 (iv)(j) that where a suit mentioned in sec. 6(iv)(j) and that would be a suit in which the subject matter in dispute is not

susceptible of monetary evaluation- relates to land or interest in land, the plaintiff may value the relief sought in the suit for the purpose of jurisdiction but such valuation shall not exceed the value of the land or interest as determined by rules made under sec. 3. These two provisions read together clearly contemplate that even in a suit in which the subject matter in dispute is not susceptible of monetary evaluation, the plaintiff may put his own valuation on the relief sought in the suit for purposes of jurisdiction." (emphasis supplied).

It clearly appears that according to the Division Bench the plaintiff has a right to determine the value of the relief which is sought to be claimed by him in the suit and it is that valuation which is to be taken into consideration for the purpose of jurisdiction.

6.5. At this juncture it would be necessary to refer to section 8 of the Suits Valuation Act, 1887, which is reproduced above. Simple reading of this section makes it evident that the valuation for the purpose of court fees as well as for the jurisdiction is required to be same in certain cases. In the present case, the plaintiffs have valued the court fees under the provisions of section 6 (iv)(j) of the BCF Act and have affixed stamp of Rs.30/=. By virtue of the deeming fiction of section 8 of the Suits Valuation Act, the valuation of the suit for the purpose of court fees has also to be considered as valuation for the purpose of jurisdiction. That is precisely the submission of Mr. Kanabar also. In a decision rendered by the learned Single Judge of this Court in the case of Filoma Pathubhai v. Ambalal D. Bhagat (supra) it has been held that by virtue of section 8 of the Suits Valuation Act deeming fiction comes into operation and because of such deeming provision the valuation for the purpose of court fees automatically governs the valuation for the purpose of jurisdiction. In the case before the learned Single Judge, the court fees stamp of Rs.30/= was affixed and it was valued for the purpose of court fees u/S. 6 (iv)(j) of the BCF Act. The learned Judge, while deciding this question, has placed reliance on different decisions of this Court mentioned in the said judgment. We do not propose to take a different view in the matter. A conjoint reading of the provisions of BCF Act i.e. section 6(iv)(j) and sections 4 and 8 of the Suits Valuation Act clearly shows that when the plaintiff determines or fixes his own valuation when the relief claimed in the suit is not susceptible of monetary

evaluation, valuation fixed by him for the purpose of court fees would be the valuation for the purpose of jurisdiction also. We are fortified by the decision of the Apex Court rendered in the case of Sathappa Chettiar v. Ramanathan Chettiar (supra), the Apex Court had an occasion to deal with section 7 of the Court Fees Act i.e. Central Legislation and also the provisions of section 8 of the Suits Valuation Act and it has laid down as under :-

"15. What would be the value for the purpose of jurisdiction in such suits is another question which often arises for decision. This question has to be decided by reading S. 7(iv) of the Act along with S. 8 of the Suits Valuation Act. This latter section provides that, where in any suits other than those referred to in Court-fees Act, S.7, paras. 5, 6 and 9 and para. 10, Cl.(d), court-fees are payable ad valorem under the Act, the value determinable for the computation of court-fees and the value for the purposes of jurisdiction shall be the same. In other words so far as suits falling under S. 7 sub-s (iv) of the Act are concerned, S.8 of the Suits Valuation Act jurisdiction shall be the same. There can be little doubt that the effect of the provisions of S. 8 is to make the value for the purpose of jurisdiction dependent upon the value as determinable for computation of court-fees and that is natural enough. The computation of court-fees in suits falling under S. 7(iv) of the Act depends upon the valuation that the plaintiff makes in respect of his claim. Once the plaintiff exercises his option and values his claim for the purpose of court-fees, that determines the value for jurisdiction. The value for court-fees and the value for jurisdiction must no doubt be the same in such cases; but it is the value for court-fees stated by the plaintiff that is of primary importance. It is from this value that the value for jurisdiction must be determined. The result is that it is the amount at which the plaintiff has valued the relief sought for the purposes of court-fees that determines the value for jurisdiction in the suit and not vice versa."

It may be noted here that section 7 of the Court Fees Act (Central) is para-materia with section 6 (iv)(j) of the BCF Act. This decision, therefore, with all force applies to the present case. When the plaintiff has

valued his suit for the purpose of court fees by paying a court fee of Rs.30/=, it would be the valuation which would decide the question of jurisdiction also.

6.6. Reliance has been sought by Mr. Shah on the decision of the Privy Council rendered in the case of *R. Subrao v. S. Venkatrao* (supra). The said decision, however, will not apply to the facts of present case. In the said decision the Privy Council was dealing with the question whether it would be appropriate for a party to raise a technical dispute at the appellate stage regarding insufficiency of the court fees and to challenge the jurisdiction of the concerned court for want of proper court fees at that stage. The Privy Council in that case has held that the purpose of enacting Court Fees Act was to secure revenue for the benefit of the State and it was not meant for arming a litigant with a weapon of technicality against its opponent. In the present case, neither at the stage of trial nor at the stage of appeal any dispute has been raised by defendants nos. 1 to 8 challenging the quantum of court fees paid by the plaintiffs. In other words, no dispute has been raised by them regarding nonpayment of proper court fees. Their only say is that if the plaintiffs have chosen to affix the court fees of Rs.30/=, that valuation would also be the valuation for the purpose of jurisdiction by virtue of section 8 of the Suits Valuation Act and the appeal would not lie before this Court. The decision of the Privy Council, therefore, does not render any help to Mr. Shah. He has also placed reliance on the decision rendered by the Bombay High Court in the case of *Shivsangappa v. Muchkhandeppa* (supra). It appears that in the said matter, in the suit only declaration was sought for by the plaintiff wherein the Bombay High Court held that the valuation for the purpose of court fees in a simple declarative suit is governed by Schedule-II, article 17 clause 3 which prescribes fixed fee of Rs.10/= subsequently raised to Rs.15/=. Under sec. 8, Suits Valuation Act wherein suits other than those referred to in the Court Fees Act, 1870, section 7 paras. 5, 6, and 9 and para. 10 clause (d) court fees are payable ad-valorem under the Court Fees Act, 1870, the value as determinable for the computation of court fees and the value for the purpose of jurisdiction shall be the same. It has thereafter held "It would, therefore, follow that in a declarative suit in which no consequential relief is asked, section, Suits Valuation Act, would have no application as the court fees are not paid ad-valorem." However, the Division Bench of this Court rendered decision in the First Appeal No. 218 of 1961 [Coram :

A.D. Desai and M.P. Thakkar, JJ. as they then were] dated 21/7/1969. In that case, the suit was filed for the declaration, injunction and accounts. The plaintiff had valued the suit in respect of reliefs for declaration, injunction and accounts at Rs.200/= for the purpose of court fees and for the purpose of jurisdiction the suit was valued at Rs.11,000/=. The said suit was dismissed by the trial Court against which the First Appeal was filed before this Court. In the said appeal preliminary objection was taken with regard to the maintainability of the First Appeal in this Court. The Division Bench held as under:-

"The question that has been raised before us is that the appeal is not maintainable in this Court. The argument was that the suit was for a declaration, injunction and accounts and therefore governed by section 6(i) and (j) of the Bombay Court fees Act of 1949. Under section 8 of the Suit Valuation Act as amended by the Gujarat Act 31 of 1964, the valuation for the purpose of jurisdiction is the same as that for the purpose of the court fees. The valuation for the court fees as stated in the plaint was Rs.200/= and, therefore, the valuation for the purpose of jurisdiction is the same, namely Rs.200/=. That being so, the argument ran, the appeal could not lie in the High Court and the same ought to have been preferred in the District Court at Baroda. In support of this argument the decision of Bansilal Lalchand Firodia vs. Bhikubai, 49, B.L.R. 545 has been relied upon. Now there is no dispute that the suit is for a declaration, injunction and accounts and is governed by the provisions of section 6 (i) and (j) of the Bombay Court Fees Act. There is also no dispute that for the purpose of court fees the suit was valued at Rs.200/=. In view of the provisions of section 8 of the Suit Valuation Act the value for the purpose of jurisdiction of the Court must be the same as that for the purpose of Court fees, namely, it should be Rs.200/=. It is, therefore, clear that the appeal is not maintainable in this Court and ought to have been filed in the District Court at Baroda. It is, therefore, ordered that the memo of appeal together with the copies of the judgment and decree be returned to the appellants on July 24, 1969 for presentation to the proper Court. There shall be no order as to costs of this appeal."

It can be seen from the above quotation that the suit in question before the Division Bench of this Court was governed u/S. 6 (iv) (i) and (j) of the Bombay Court Fees Act, 1949. In both the clauses the plaintiff is required to fix the valuation for the relief sought in the suit and the Division Bench decided that it would be governed by section 8 of the Suits Valuation Act and for the purpose of jurisdiction, the valuation for the purpose of Court fees would be the valuation for jurisdiction. Thus, when the Apex Court and this Court in aforesaid decisions have laid down that the jurisdiction has to be determined in light of the valuation of the relief claimed in the suit for the purpose of court fees would be the valuation for the purpose of jurisdiction also by virtue of deeming fiction of section 8 of the Suits Valuation Act. If that be so, we have to accept the contention raised by Mr. Kanabar in the Civil Application challenging the maintainability of the appeal before this Court. It is, therefore, clear that the present suit is only for declaration and permanent injunction wherein the valuation for the purpose of court fees has been determined by the plaintiffs by affixing court fees stamp of Rs.30/= u/S. 6(iv)(j) of the BCF Act; which will govern the jurisdiction.

In the case of Bansilal Lalchand v/s. Bhikubhai, reported in 49 B.L.R. p.545 the Bombay High Court has held "In the light of the provisions of s.7 (iv) (c) of the Court-fees Act and s.8 of the Suits Valuation Act the words "the amount or value of the subject-matter" must, we think, denote the claim for jurisdiction, and, as I have said above, that claim is statutorily determined as soon as the claim for court-fees is fixed by the plaintiff."

7. In view of the aforesaid provisions of law as well as decisions of this Court and the Apex Court, we are of the opinion that against the judgment and decree passed by the trial Court in such suits, the appeal would lie before the District Court and not before this Court. We hold accordingly. Since the matters are heard on preliminary issue without going into other aspects of the case and we uphold the preliminary objection, we grant Civil Application No. 6588 of 2003 filed by defendant nos. 1 to 8.

Before we part with this judgment, we would like to quote para. from aforesaid case of Bansilal Lalchand (supra) as under :

"That being our view, we think the preliminary

objection must be upheld. It is true that this decision necessitates the return of the appeal to the appellants for presentation to the proper Court; but we are unable to hold that for this result the plaintiffs alone are to be blamed. The defendants themselves could have raised the contention in the trial Court that the values of the claims set out in the plaint were inconsistent and the Court itself could have discovered the inconsistency if the plaint had been more judiciously scrutinised before the trial commenced."

8. The result is that First Appeal No. 1520 of 2003 and First Appeal No. 1690 of 2003 as presented in this Court are incompetent and must, therefore, be returned to the respective appellants for presentation to the proper Court alongwith the respective Civil Applications Nos. 5746 of 2003 and 6312 of 2003. No order as to costs.

[KSHITIJ R. VYAS, J.]

[AKSHAY H. MEHTA, J.]

* Pansala.